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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/557,827

11/23/2005

Fritz-Albert Popp

004640-053

6052

21839

7590

12/29/2008

BUCHANAN, INGERSOLL & ROONEY PC

POST OFFICE BOX 1404

ALEXANDRIA, VA 22313-1404

EXAMINER

HYUN, PAUL SANG HWA

ART UNIT

PAPER NUMBER

1797

NOTIFICATION DATE

DELIVERY MODE

12/29/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/557,827	<b>Applicant(s)</b> POPP ET AL.	
	<b>Examiner</b> PAUL S. HYUN	<b>Art Unit</b> 1797	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/23/05</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The preliminary amendment filed on November 23, 2005 amending claims 1-4 and the Specification has been acknowledged. The claims will be examined pursuant to the preliminary amendment.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims **1-4** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the tissue". There is insufficient antecedent basis for this limitation in the claim.

Claim 2 is indefinite because the scope of the claimed measuring chamber is unclear. It is improper to refer to another patent to limit the scope of a claim. This claim is an omnibus type claim. Consequently, claim 2 will not be examined on the merits.

Claim 4 is indefinite because it is unclear whether the limitations in the parenthesis is intended to be further limiting in that the claimed filter is limited to one of the three types recited, or whether the limitations in the parenthesis are intended to be exemplary.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1797

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims **1 and 3** are rejected under 35 U.S.C. 103(a) as being unpatentable over Buesselmann (US 6,500,197 B1) in view of Costa Dos Santos (US 2002/0173831 A1).

Buesselmann discloses a method for determining the effects of a stimulus on biophoton emission of human skin (see lines 40-53, col. 2). The method comprises the steps of using a photomultiplier to measure the biophoton emission of a person prior to subjecting the person to a stimulus, subjecting the person to a stimulus for 10-30

Art Unit: 1797

minutes (e.g. full-bath bath), and measuring the biophoton emission of that person immediately following the stimulation. The method disclosed by the reference differs from the claimed invention in that the reference does not disclose the step of measuring the biophoton emissions of different areas of the body.

Costa Dos Santos discloses that certain areas of the body emit considerably higher biophoton emission (see [0001]). The reference discloses that these areas are characterized by electrical conductivity and they correspond to points of the body where acupuncture needles are typically placed. In light of the disclosure of Costa Dos Santos, it would have been obvious to one of ordinary skill in the art to take biophoton emission readings of different parts of the body prior to and after the application of the stimulus to 1) locate these special regions; and 2) determine the effects of the stimulus on these special regions compared to areas that produce normal photon emission.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buesselmann in view of Costa Dos Santos as applied to claims 1 and 3, and further in view of Denton et al. (US 2003/0093135 A1).

Neither Buesselmann nor Costa Dos Santos disclose the use of a filter.

Denton et al. disclose a method for measuring the biophoton emission of the human skin (see [0021]). The method comprises the step of inducing biophoton emission using monochromatic light produced by a filter (see [0038]). The reference discloses that the filter prevents the passage of undesirable wavelengths that can interfere with the measurement of biophoton emission. In light of the disclosure of

Art Unit: 1797

Denton et al., it would have been obvious to one of ordinary skill in the art to use monochromatic light produced by a filter in the modified Buesselmann method to obtain accurate measurements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL S. HYUN whose telephone number is (571)272-8559. The examiner can normally be reached on Monday-Friday 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Paul S Hyun/  
Examiner, Art Unit 1797

/Jill Warden/  
Supervisory Patent Examiner, Art Unit 1797

Application/Control Number: 10/557,827  
Art Unit: 1797

Page 6